Due service of the within Brief is hereby acknowledged this.....day of September, A. D. 1931.

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Attorneys for Appellees.

FILE COPY

APR 13
CHARLES ELMORE

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1930.

No. [redacted] 43

Bandini Petroleum Company, a corporation; Commodore Petroleum Company, a corporation; Wilshire Oil Company, Inc., a corporation; Wilshire Annex Oil Company, a corporation; and Ambassador Petroleum Company, a corporation,

Appellants.

vs.

The Superior Court of the State of California, in and for the County of Los Angeles, and Honorable William Hazlett, as one of the judges thereof,

Appellees.

MOTION BY APPELLEES TO DISMISS APPEAL OR AFFIRM JUDGMENT BELOW.

U. S. WEBB,
Attorney-General, State of California,
JAMES S. BENNETT,
Attorney for Director of Natural Resources, State of California,
Attorneys for Appellees.

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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1930.

Bandini Petroleum Company, a corporation, et al.,

Appellants,

vs.

The Superior Court of the State of California, in and for the County of Los Angeles, and Honorable William Hazlett, as one of the judges thereof,

Appellees.

MOTION BY APPELLEES TO DISMISS APPEAL OR AFFIRM JUDGMENT BELOW.

Come now the appellees in the above entitled cause and move that the appeal be dismissed, or in the alternative the judgment below be affirmed.

Facts on Which the Motion Is Based.

The California Legislature in 1929 passed an act declaring the "unreasonable waste" of natural gas to be unlawful, and placed the operators of oil and gas wells

on notice by declaring that the release of natural gas into the air shall be *prima facie* evidence of unreasonable waste. The act of the Legislature authorized the Director of Natural Resources, in the name of the People of the State of California, to maintain an action in equity to restrain the unreasonable waste of natural gas. Pursuant to this Act the Director of Natural Resources commenced an action in the appellee Superior Court against some forty-three defendants operating oil and gas wells in the Santa Fe Springs Oil Field in the county of Los Angeles. In response to an order to show cause the defendant-appellants appeared, and after an extended hearing the Superior Court granted a temporary injunction on March 19, 1930. On application this temporary injunction was modified by order of date March 28, 1930. On April 9, 1930, defendant-appellants applied to the District Court of Appeal of the state of California and obtained an alternative writ of prohibition directed to the Superior Court out of which the temporary injunction had been granted. The District Court of Appeal on submission denied the writ of prohibition. The Supreme Court of the state of California denied a hearing, and the order denying the writ of prohibition became final in the state courts on January 28, 1931. The appeal to this court is from the final order in the District Court of Appeal denying the writ of prohibition so sought to prevent the appellee Superior Court enforcing the temporary injunction pending the trial of the action in that court. No substantial Federal question is involved in the appeal. The appeal should be dismissed or the judgment below affirmed on each of the following grounds:

1. The appellee court of equity has jurisdiction by preliminary injunction to preserve the subject matter of the action until a trial may be had and the issues of fact and law determined.

2. Jurisdiction in equity includes the power to determine wrongly as well as the power to determine rightly. Error is to be corrected by appeal and not by writ of prohibition.

3. Every requirement of due process of law under the Constitution of the United States is met by a trial on the merits in a court of general jurisdiction with the right of appeal to the Supreme Court of the state. This the California statutes provide.

4. The right of a state to prevent the waste of natural gas by legislation enacted in the exercise of the police power has been established by decisions in this court. The opinions of this court in these cases have become a part of the jurisprudence of all the oil and gas producing states with the exception of Montana.

5. The construction of the statutes of California is for the courts of last resort of that state.

6. The definition of property rights in land is a matter of local law.

7. The statute does not impair the obligation of appellants' lease contracts.

8. The California statute as construed by its courts of last resort contains as clear a definition of the prohibited unreasonable waste of natural gas as the nature of the subject matter will permit.

9. The operators of oil and gas wells are put on notice by the provision of the statute that the release of any gas is *prima facie* evidence of unreasonable waste.

10. There is no substantial Federal question involved in the appeal.

The public policy of the state of California in the regulation of a great natural resource is suspended by a *supersedeas* pending a decision the appeal in this court. A speedy conclusion is accordingly urged.

Respectfully submitted,

U. S. WEBB,
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